

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	Art Unit: 1645
)	
NIELSEN, Jan Clair)	Examiner: GANGLE, B.
)	
Serial No.: 10/562,421)	Washington, D.C.
)	
Filed: May 17, 2006)	November 25, 2009
)	
For: INITIATION OF)	Docket No.: NIELSEN=6A
FERMENTATION)	
)	Confirmation No.: 5536

PETITION FOR SUSPENSION OF ACTION PURSUANT TO
37 CFR 1.103(a)

U.S. Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

S i r :

Pursuant to 37 CFR 1.103(a), applicants petition for suspension of six months. This petition is timely because the decision on Petition mailed November 17, 2009 vacated the last office action, and hence no requirement for reply by applicant is outstanding.

As a showing of good and sufficient cause for suspension, applicants note the following:

(1) the sole rejection in the prior action was for written description;

(2) the Federal Circuit has agreed to rehear, en banc, Ariad Pharmaceuticals, Inc. v. Eli Lilly & Co. (Case No. 2008-1248, August 21, 2009). See www.cafe.uscourts.gov/opinions/08-1248ebo.pdf. Specifically, the Court has agreed to consider whether (1) the patent statute in fact requires a written description requirement separate from the enablement requirement, and, (2) if so, the scope and purpose of that requirement.

Briefs have been filed (there are 25 amicus briefs), and oral hearings are scheduled for December 7.

If the Federal Circuit decides that there is no separate WD requirement, then this case should be allowed, despite the

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reasoning, based on prior decisions, set forth in the rejection. Even if the Federal Circuit acknowledges the existence of a separate WD requirement, it may substantially alter its interpretation of the "scope and purpose" of that requirement, thereby changing what the PCT must show to make out a prima facie case of lack of WD, and/or what applicants must do to rebut the prima facie case.

If prosecution proceeds, then the PTO may waste resources preparing office actions, and applicants waste resources preparing responses, that are wholly or partially mooted by the Ariad decision once it is announced. Suspension of action is therefore warranted.

The Petition fee set forth in 1.17(g) (\$200) is paid by e-filed credit card authorization herewith. Please charge any deficiency in the fee to deposit account 02-4035.

Respectfully submitted,

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